RULES REPORT – 2004

I. INTRODUCTION

In 2004, the growth management hearings boards began a process to review and revise their rules of Practice and Procedure, Chapter 242-02 WAC. The genesis of this process was twofold: first, the boards last conducted a comprehensive review of the rules in 1997 and felt that there had been enough experience with the rules to be able to assess their efficiency and effectiveness at this time; and second, the boards had received feedback through the GMA Working Group[1] that there were areas in which improvements could be made in board procedures. As a result, the boards decided that it was a good time to conduct an overall review of the boards' rules of practice. The timing for this review was also intended to occur in time to help the boards manage the anticipated workload increase expected as local jurisdictions meet their update obligations under RCW 36.70A.130.

Public meetings were held in Moses Lake on April 14, 2004, in Everett on April 20, 2004, and in Olympia on April 29, 2004. The purpose of the meetings was to solicit comments and suggestions for improvements to board procedures generally, and for rule changes in particular. These meetings gave board members the opportunity to hear and discuss problem areas identified at the meetings.

In addition to comments received at the public meetings, the board also received written comments from Jefferson, Thurston and Lewis Counties.

The boards appreciate all the comments and suggestions they have received, and especially the opportunity to discuss the identified problem areas with people affected by them. Because the boards only have the ability to address board practice, some of the issues identified are not within the purview of the boards; they require legislative action to change the GMA[2] itself. Other issues fall outside the rules but may be addressed by the boards informally; these include development or improvement of educational materials and research tools. There were a number of issues identified that the boards can address through rule changes, however. Some of the problems identified are fairly straightforward and may be cured readily. Others require more detailed rule development and may take a little more time to accomplish.

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[1] The GMA Working Group is comprised of stakeholders involved with the implementation of the GMA. The group was formed in July 2003 to identify potential improvements to the GMA. The membership of the GMA Working Group includes: the Association of Washington Cities, The Washington State Association of Counties, the Washington State League of Women Voters, 1000 Friends of Washington, the Washington Farm Bureau, the Washington Environmental Council, the Washington State Department of Community, Trade and Economic Development ("CTED"), and the National Association of Industrial and Office Parks.

[2] The term "GMA" is shorthand for the Growth Management Act, Ch. 36.70A RCW.

This report will detail the suggestions made within categories that reflect the boards' ability to respond to them. The first category consists of straightforward rule changes that the boards can address at the next joint boards meeting. The second category consists of concerns that are appropriate for adoption as rules but may require additional time to craft in order to encompass the needs of all three boards. The third category consists of suggestions that the boards do not consider merit rule change; this does not mean that the board would not consider a rule proposal submitted pursuant to WAC 242-02-052 and 242-02-54, but it does mean the boards will not propose a rule on the suggested subject. The fourth category of suggestions consists of suggestions for changes that would require legislative action. The fifth category contains ones for additional education and increased access to board decisions. A sixth category raises performance issues for the boards that can neither be legislated nor affected by rules, but are appropriate concerns for board member attention.

II. RULES THAT CAN BE READILY DRAFTED

The service requirements of WAC 242.02-310 should be clarified to state what "promptly" means for service upon parties. John Moffat (Snohomish County), Everett meeting. *The Rules Committee will propose a rule clarifying that service must be made upon the other parties no later than the date upon which filing with the board is required; and if a pleading is filed prior to the deadline, service on the parties must be achieved no more than one business day after that pleading is filed with the board. The draft rule will be made available for public comment before the joint boards consider adoption in October, 2004.*

WAC 242-02-210(2)(d) should be modified to reflect that SEPA standing is not different from GMA standing, except in the Central Puget Sound region. Steve Erickson (Whidbey Environmental Action Network), Everett meeting. *SEPA standing is one area where the boards have adopted differing interpretations of the statutory requirements. The Eastern and Western Boards have ruled that SEPA issues may be raised by those with standing as defined by RCW 36.70A.280(2). The Central Puget Sound Board has ruled that standing to raise SEPA issues must be achieved as set out in Trepanier v. Everett*, 64 Wn. App. 380, 382-83, 824 P.2d 524, review denied, 119 Wn.2d 1012 (1992). *The referenced rule was intended to reflect the two differing interpretations of standing requirements to raise SEPA challenges before the boards and not to adopt any one interpretation. The Rules Committee will propose a rule clarifying this for public comment and consideration by the joint boards.*

The "record on review" should be clarified. Lisa Verner (APA), Olympia meeting. *The boards believe that much confusion has been generated by the use of the term "record" in board practice. In the statute (RCW 36.70A.290(4))* and *in the rules (WAC 242-02-520), the "record" means all the materials used by the local government in deciding to take the challenged action. However, the boards also commonly refer to the "record before the board". The only portions of the record of the local government that are before the board are those that are provided by the parties as part of their arguments. The term "evidence" more accurately reflects the information on which the boards base their decisions than does the term "record", and it is the term used in both the statute*

and the rules. While the rules themselves do not confuse these terms, board orders routinely use the term "record" in both senses. The boards intend to correct this practice.

Rules for participation by intervention and amicus need clarification. John Zilavy (1000 Friends of Washington), Olympia meeting. *The rules currently provide that intervention (WAC 242-02-270) and amicus (WAC 242-02-280) participation conditions are determined by the presiding officer. The Rules Committee will draft a rule that addresses requirements for motions to intervene or participate as amicus, and will provide that their pleadings must be filed at the same time as required for the party whose position the intervenor or amicus supports.*

The boards should establish a rule defining the record for a compliance proceeding. Gerald Steele, Olympia meeting (through John Zilavy). *The procedures applicable to compliance hearings are presently established on a case-by-case basis by the presiding officer pursuant to WAC 242-02-893. This has led to some confusion in the past, as the procedure followed in one case may not be the same as required in another case. A uniform rule that apprises the parties what evidence would be considered in a compliance proceeding should also assist in determining the record to be certified on appeal to court. The Rules Committee will draft a rule addressing evidence in compliance hearings for public comment and consideration by the joint boards.*

All three boards should allow electronic filing. John Zilavy (1000 Friends of Washington), Olympia meeting; Leonard Bauer (CTED). *The boards have had varying experiences with electronic filing. Because of the additional cost and staff time associated with creating copies for each board member, electronic filing cannot substitute for filing "hard copies" with the board. However, the boards would consider allowing electronic filing to meet the deadlines set in the prehearing order, with hard copies to follow postmarked no later than the filing deadline. Electronic service upon other parties is not always possible because not all parties have computers. The Rules Committee will draft a rule allowing electronic filing with the boards for public comment and consideration by the joint boards.*

Provide that a list of parties and participants be appended to the prehearing order so that it is clear upon whom service is required to be made. Lisa Verner (APA), Olympia meeting. *This is a reasonable request so that parties are not left guessing upon whom service must be made. The Rules Committee will draft a rule specifying that service will be considered complete when it is made upon the* parties *and participants listed in the prehearing order with the boards for public comment and consideration by the joint boards.*

The boards should preclude the use of cell phones during telephonic conference call hearings. Leonard Bauer (CTED), Olympia meeting. *Cell phones can create background noise or interference on conference call hearings. The Rules Committee will draft a rule prohibiting the use of cell phones on conference call hearings for public comment and consideration by the joint boards.*

III. SUGGESTIONS FOR RULES CHANGES AND ADDITIONS THAT MAY REQUIRE ADDITIONAL TIME

Add to WAC 242-02-530, entitled "Motions", a new subsection (5) and renumber the sections that follow: "All claims set forth in a [PFR] that the local government did not comply with the public participation requirements of the GMA as set out in the RCW 36.70A.130 and RCW 36.70A.140 shall be the subject of a mandatory dispositive motion before the Hearing on the Merits and a ruling on the public participation argument shall be issued by the Board before the Hearing on the Merits." Jefferson County Commissioners, letter dated April 26, 2004. *This is a creative suggestion to avoid the need for all parties to brief and argue issues that the board will not decide (or at least not decide at that time). If the public participation requirements are not met, the board will ordinarily remand the case for compliance with those requirements; the other issues raised in the petition for review usually are not decided until the public participation requirements are met. Creating a mandatory dispositive motion procedure for public participation challenges would ensure that those claims would be decided before the parties submitted their briefs and arguments in support of the other issues. The Rules Committee will draft a possible rule for public comment and discussion at the joint boards meeting in October 2004, but the boards anticipate that such a rule may require further drafting after public comment and board discussion.*

The respondent should have the right to know the composition of a petitioner organization to avoid a person's appearing at a hearing and purporting to appear for the petitioner organization without prior notice to the respondent or the board. Jefferson County Commissioners, letter dated April 26, 2004. *The problem identified here arises from the ability of a "duly authorized representative" of a party to appear before the board. WAC 242-02-110(1). It appears that the problem might be cured by a rule addressing requirements for timely identification of the authorized representative(s). The Rules Committee will draft a rule addressing this problem for public comment and consideration by the joint boards.*

A legislative action taken by a local government to cure a finding of noncompliance should only be subject to appeal through a new PFR. Jefferson County Commissioners, letter dated April 26, 2004. The growth boards need to limit the "snowball effect" of new PFRs based on local decisions made in response to a compliance order open up a whole new round of appeals. Lewis County Comment Letter, April 28, 2004. Consolidate cases through the compliance process, including new PFRs. Lisa Verner (APA), Olympia Meeting. *These perspectives illustrate a problem facing the boards with respect to compliance proceedings. Pursuant to RCW 36.70A.330(2), a person with standing to challenge the legislation enacted in response to the board's final order may participate in the compliance hearing along with the original petitioner(s). This provision suggests that the person with standing could also file a new PFR and, in fact, there is no statutory limitation on the ability to file a PFR regarding any adopted comprehensive plan, development regulation or permanent amendment to them. RCW 36.70A.290. One suggestion is that there must be a new PFR to challenge the new legislation; the other suggestion is that a new PFR should not be allowed in addition to the compliance proceedings. The third suggestion is to allow the new PFR but consolidate it with*

pending compliance cases. It is not clear that it is within the boards' authority to limit the ability of a citizen to appeal local legislation; however, it is likely within the boards' authority to establish rules directing whether the appeals should be raised in the compliance case or independently. The boards will discuss this issue at the joint boards meeting in October 2004.

Testimony should only rarely be allowed. Allowing expert testimony after the adoption of a local government enactment does not allow the local government an opportunity for response. Darren Nienaber, Olympia evening meeting. Allowing planners to speak for the local jurisdiction often amounts to testimony but there is no real opportunity to respond to it. Gene Butler, Olympia evening meeting. *Board rules do not prohibit the use of testimony but the practice is to allow it only upon a showing of necessity. However, it is reasonably common for board members to ask questions of planners that may stray into the realm of evidence, even if the planners do not make presentations on behalf of local government. The boards find that local planners often have a more in-depth understanding of the planning issues than do counsel and would not restrict planners from making presentations. If new evidence is thereby introduced, the petitioner(s) should be allowed to respond. The Rules Committee will draft a rule establishing a method for parties to raise a response to new information submitted at hearings for public comment and consideration by the joint boards.*

The boards should require alternative dispute resolution. Scott Merriman (Washington State Association of Counties), Olympia meeting. *While it would require a legislative change to require alternative dispute resolution (as Mr. Merriman acknowledged), the boards could include an alternative dispute resolution stage in its regular case schedule. This was discussed at the Olympia meeting and there was general agreement that alternative dispute resolution should not be required in every case, but that the boards should consider incorporating it into most cases. This is already a part of the boards' strategic plan and does not appear to require a rule change. Since a board member from another board is needed to provide a board settlement officer, it is sometimes difficult to schedule settlement discussions to fit within the 180-day deadline for final decisions and orders. Also, with an upcoming workload increase anticipated as a result of the update requirements of RCW 36.70A.130, available board member time slots for settlement discussions will be at a premium. This may mean that parties will be encouraged to consider private mediation services; CTED maintains a list of qualified mediators for that purpose, including some prior board members. However, an emphasis on alternative dispute resolution will be an item of discussion at the October 2004 joint boards meeting.*

IV. SUGGESTIONS NOT ADOPTED BY THE BOARDS

The cost of copies should be shared by the parties. Jefferson County Commissioners, letter dated April 26, 2004; Scott Merriman (Washington State Association of Counties), Olympia meeting; Lisa Verner (APA), Olympia meeting; John Sonnen (Thurston County), Olympia meeting. *Several participants raised a concern about the cost of copies, especially to local government. A suggestion was made that the cost of a copy of the record of the local government be shared by the petitioner(s) and the local*

government. This suggestion appears to rest on the practice of creating a copy of the entire record. However, the rule does not require that a copy of the local government record be created. As long as the petitioner(s) has access to the original record of the local government, the board does not require the local government to prepare a copy of the entire record. Copies are only required if any party wishes to submit portions of the record as evidence. Then, the party submitting the evidence should bear the cost of copying it. The boards do not see a need for a rule change on this point.

However, there was also a request for a rule allowing the local government to charge the petitioner(s) for copies of documents by reference to the Public Records Act, which would include the cost of copying evidence from the record. The Rules Committee will draft such a rule for public comment and consideration by the joint boards.

Use of expert evaluation of scientific evidence in cases alleging failure to use best available science. Add a new section to WAC 242-02-650: "The Board shall not, if the [PFR] includes an allegation that the local government did not analyze, include, consider or utilize Best Available Science, a term found at RCW 36.70A.172, render any final decision, order of invalidity or compliance order unless and until it has obtained from an appropriately trained scientist a written report relating to and analyzing the relevant scientific issues and distributed said report to all parties." (Jefferson County Commissioners, letter dated April 26, 2004; also cited in Thurston County's memorandum of April 27, 2004 submitted by County Commissioner Bob McLeod at the Olympia meeting). *Under RCW 36.70A.172(2), the board is permitted but not required to use advice from a scientific or other expert to "assist in reviewing a petition under RCW 36.70A.290 that involves critical areas." This suggestion goes beyond the statutory grant of authority to the boards, by requiring an expert opinion on the merits of the dispute, and further requires that this expert opinion be made available to the parties. The boards see three major problems with this suggestion: first, it entails a significant financial cost because the board would be required to employ a scientist in every case in which best available science is at issue; second, it assumes that the board would be able to retain a superior scientist to those retained by the parties, with no conflict of interest with respect to either the subject matter or the parties; and third, it would likely delay a board decision, potentially beyond the 180-day deadline, because the board's expert would need time to prepare a report and the parties' own experts would require time to respond. The boards do not think such a rule is prudent but take note of the implicit suggestion that the boards should utilize RCW 36.70A.172(2) more often to assess scientific evidence.*

Amend the rules to require the board to conduct a site visit if any party requests it. Add to WAC 242-02-540, after the first sentence, "A Board is permitted to visit the region, site or location that is the subject of a [PFR][3] and the objection of one party to a site visit shall not be grounds for a board decision to not perform a site visit." Jefferson County Commissioners, letter dated April 26, 2004; also comments of Leonard Bauer (CTED), at Olympia meeting. *The boards believe there may be reasons why a site visit is not appropriate in a given case; a rule that requires a site visit upon the request of any party*

[3] PFR is the abbreviation used for the petition for review.

may unreasonably restrict the board's ability to assess the circumstances. There is nothing in the present rules to restrict a board from conducting a site visit if useful upon motion by any party.

Require the board to admit and consider the testimony of prior board members. Add to WAC 242-02-650: "The Board shall deem admissible and consider the testimony of former or retired Hearings Board members if relied upon by a local government or Petitioner". Jefferson County Commissioners letter dated April 26, 2004. *This suggestion appears to arise from an unusual case in which there was confusion about the role of a former board member in settlement proceedings. Testimony is ordinarily not allowed in board proceedings, and settlement discussions are confidential. Further, there is no presumption in the GMA that reliance upon advice by any person, whether a former board member or another individual, is evidence of compliance. Therefore, the opinion of a former board member (or a board member from another board, sitting as settlement officer) should not receive special status under the rules.*

V. PROPOSALS REQUIRING LEGISLATIVE ACTION

Add to WAC 242-02-210 a new section (4) that reads: " The [PFR] shall be accompanied by a filing fee equal to the fee charged for the filing of an action in law or equity in Superior Court." (Jefferson County Commissioners letter dated April 26, 2004, also cited in Thurston County's memorandum of April 27, 2004 submitted by County Commissioner Bob McLeod at the Olympia meeting) *The subject of requiring a filing fee as a prerequisite for filing a petition for review is one that several cities and counties have raised. The League of Women Voters, on the other hand, indicated its belief at the Olympia meeting that a filing fee might restrict citizen access without necessarily winnowing out frivolous petitions. In addition to the fact that this suggestion lacks consensus, we note that it would require legislative action to add such a requirement to the GMA. The boards presently do not have authority to levy filing fees.*

The basis for standing to raise SEPA challenges to the boards should be settled and consistent among the three boards. Leonard Bauer (CTED), Olympia meeting. *The Western and Eastern boards hold that RCW 36.70A.280 establishes the bases for raising SEPA challenges; the Central Puget Sound board holds that standing to raise SEPA claims to the boards is the same as standing to raise SEPA claims established in Trepanier v. Everett,* 64 Wn. App. 380, 382-83, 824 P.2d 524, review denied, 119 Wn.2d 1012 (1992). *The boards are aware of the different interpretations adopted by the three boards and the rationale for each interpretation. However, each board must decide issues it believes is correct under the law and there is no mechanism in the GMA for achieving consensus among the boards. Unless the boards reach the same conclusion about the meaning of the law, the conflict between the two interpretations of the GMA requirements for standing to raise SEPA claims would have to be resolved by a reviewing court or by the Legislature.*

The boards should give greater deference to the opinions and advice of state agencies such as CTED. Lisa Verner (APA), Olympia meeting. If a state agency provides guidance contrary to the Boards' interpretation, the guidance provided by the state should prevail and be given deference. Lewis County Comment Letter dated April 29, 2004. *Under the GMA, the obligation to determine local government compliance with the GMA, SEPA and SMA as to comprehensive*

plans and development regulations is given to the hearings boards. See RCW 36.70A.280,.290, and .300. CTED has an important role under the GMA to provide assistance to local jurisdictions in meeting their obligations under the Act and CTED must be given the opportunity to comment on any comprehensive plan or development regulation. RCW 36.70A.106. However, CTED has neither the resources nor the authority to review all comprehensive plans and development regulations to determine compliance with the GMA. A different enforcement scheme might place the authority to determine compliance in a state department such as is done in Oregon, rather than in a quasi-judicial system such as Washington has. However, that is not what the GMA provides.

The boards are cognizant of CTED's expertise and often defer to CTED interpretations of the GMA, particularly as embodied in the Washington Administrative Code (WAC); in addition, the boards look to the minimum guidelines established by CTED pursuant to RCW 36.70A.050. However, CTED advice in a given case is not binding authority and it would take a legislative change (and, we believe, a change in the enforcement scheme overall) to make it so.

The hearings board should obtain a written consultation from the State Department of Ecology on the completeness or appropriateness of a non-project SEPA review before considering an allegation that the SEPA review was not complete or proper. Jefferson County Commissioners letter dated April 26, 2004. *This suggestion is similar to the one that precedes it in that it suggests that the boards defer to the expertise of a state agency. In addition to the concerns about statutory responsibility for assessing compliance raised above, the boards also note that state agencies have their own mandates and are not subject to the direction of the boards to provide a written consultation. A legislative change would be needed both to change the responsibility for reviewing SEPA compliance in the adoption of comprehensive plans and development regulations, and to impose an obligation to provide the board with a written consultation (under expedited time requirements) on the Department of Ecology.*

A PFR to challenge a policy decision (any decision that is not site specific) should require the signature of a number of registered adult voters equal to four percent (4%) of the number of voters in the last presidential election. Jefferson County Commissioners letter dated April 26, 2004. A single individual or small group of individuals should not be allowed to petition for review. Lewis County Comment Letter, April 29, 2004. *A change in the requirements for filing a petition for review would require legislative action.*

Reexamine how members of the growth boards are selected. There needs to be a legislative process, similar to that of RCW 90.58.170, for appointments to the growth board, including input from the regulated jurisdictions rather than being appointed by the Governor. Lewis County Comment Letter, April 29, 2004. *RCW 36.70A.260 establishes the requirements and process for appointment to the boards. It would require legislative action to change them.*

Instead of mimicking a courtroom procedure, growth board proceedings should be more like mediation between the parties, with parties able to negotiate and with the ability to ask questions and advice of the growth board. Lewis County Comment Letter, April 29, 2004. *The GMA establishes a quasi-judicial system for hearing challenges to local legislative adoptions of comprehensive plans and development regulations. This means that the process is adversarial and the boards act in a "judge-like"* capacity. *This suggestion proposes an alternative process which would put the boards into a different role, providing guidance to local government and*

facilitating mediation among the parties. While the boards do attempt to use settlement proceedings where appropriate, the role of the boards under the GMA is to adjudicate issues presented in proper petitions for review, and provide written decisions on the issues raised. A change to the process as suggested would require legislative action.

Add to WAC 242-02-890 a statement that because the amount of time granted for compliance is 180 days or less, a local government is exempt from the 60-day notice requirement of RCW 36.70A.106 and other public participation requirements. Jefferson County Commissioners, letter dated April 26, 2004. *The boards may not change statutory requirements by rule. We note that the statute exempts "enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid" from strict compliance with public participation requirements. RCW 36.70A.140. From this limited exemption, it appears that the Legislature did not intend that enacting legislation in response to findings of noncompliance would be likewise exempted from other requirements of the GMA. To change the statutory requirements, legislative action would be required.*

VI. EDUCATION AND ACCESS TO BOARD DECISIONS

Improve the board web-page so that decisions are grouped by topic and linked to court decisions. John Sonnen (Thurston County), Olympia evening meeting. *The Digests do group decisions by key concept. They do not, however, link the board decisions to subsequent court cases. The boards will look into the possibility and cost for providing such links.*

Hold brown bag discussions with planners so that they can be informed about board decisions. John Sonnen (Thurston County), Olympia evening meeting. *Board members currently do make presentations to planner groups as requested. Bearing in mind that these presentations are in the nature of updates, rather than elaborations on board decisions, board members are available to provide this kind of information in less formal settings.*

Keep the Digest up-to-date. Thurston County's memorandum of April 27, 2004 submitted by County Commissioner Bob McLeod at the Olympia meeting. *This past year, the boards experimented with updating the electronic version of the digests rather than printing a hard-copy of the updates. The feedback we received is that this is a less satisfactory method for many users of the digests so we will return to publishing a hard-copy. The boards have also undertaken in the strategic plan to update the digests twice a year instead of just annually.*

VII. PERFORMANCE ISSUES FOR THE BOARDS

Provide clarity and guidelines for achieving compliance so that local jurisdictions know what the threshold is for compliance. Lisa Verner (APA), Olympia meeting. Boards should specify the issues on which compliance is not found and explain why the local jurisdiction is not in compliance. Scott Merriman (Washington Association of Counties), Olympia meeting. *The boards agree that it is important that their decisions clearly reflect the issues decided and the basis for noncompliance findings. The boards cannot*

direct how compliance is achieved because the local jurisdiction may choose a route that the board had not anticipated and still achieve compliance. Nevertheless, the boards acknowledge the difficult situation for local governments who feel that they have to guess what will work; the boards will bear these comments in mind as they draft their decisions.

Planners and policymakers need tools to enable them to more efficiently keep up with trends in hearings boards' decisions. Thurston County's memorandum of April 27, 2004 submitted by County Commissioner Bob McLeod at the Olympia meeting; Lisa Verner (APA), Olympia meeting. A quarterly update on Board decisions would be helpful. John Sonnen (Thurston County), Olympia meeting. *The dilemma facing the boards in summarizing board decisions is that each decision is a group decision and in many cases, the language is carefully drafted to reflect a consensus position. Furthermore, each decision is fact-based, and has to be considered in light of the particular facts presented to the board. This is why the Digest prepared annually by each board quotes directly from the case cited. While a more summary tool would be useful, it carries the potential for being misleading or even inaccurate by being less complete than the decision itself. If such a summary were to be prepared by the boards, it would carry the weight of a board decision even though it would not actually decide a particular case and would inevitably use different language than was used in the actual decisions.*

For these reasons, the boards believe that it is best for an agency like CTED to provide the summary of trends that these participants request. Individual board members are willing to assist CTED in developing summaries of trends to make the summaries as accurate as possible.

Local jurisdictions feel that the burden of proof shifts to them rather than resting with the petitioner(s). Scott Merriman (Washington Association of Counties), Olympia meeting; Lisa Verner (APA), Olympia meeting. *The statute clearly provides that the petitioner has the burden of proof at all times, except under the limited circumstances where a finding of invalidity has been entered. RCW 36.70A.320. The boards scrupulously adhere to this standard of review. It is difficult to know how to respond to the perception that the burden shifts to local government. Perhaps it arises from the fact that petitions for review by definition raise challenges to the actions of local jurisdictions; the proceedings inevitably focus on what the local government may have done "wrong", regardless of the many things the local government has done "right". Additionally, the issues tend to center on whether the local government did the tasks or met the goals required by the GMA; in this sense, the local government may feel that it has to prove its compliance even though the board is reviewing that evidence of compliance under a "clearly erroneous" standard. The boards would welcome some specific suggestions on how to address this perception.*

Local jurisdictions feel that there is a bias in favor of *pro se* petitioners and that the boards are too willing to assist those petitioners in drafting their issues for review. Lisa Verner (APA), Olympia meeting; Scott Merriman (Washington Association of Counties), Olympia meeting. *Citizen participation in the planning process, including the ability to*

file appeals with the growth boards, is a hallmark of the GMA. The boards strive to make their procedures open and accessible so citizens can pursue appeals, even without the benefit of counsel. Framing issues for review is one of the more difficult areas for pro se petitioners (although it can also be difficult for attorneys) and the boards try to ensure that the issues are clear and fairly raise the challenges that the petitioner wishes to pursue. Clarity benefits both sides. Since a petitioner can only raise issues to the board that he or she raised in the local government process below, there is no unfairness in assisting petitioners in properly framing those same issues for purposes of appeal. However, making sure the process is available to all does not mean a bias in favor of one side or the other and the board members will take care not to create that impression.

The demeanor of board members at hearings should be evenhanded. Leonard Bauer (CTED), Olympia meeting. *The boards agree that board members should conduct themselves so that there is no appearance of partiality towards one side or another. Some participants indicate a desire for greater informality in board proceedings (see earlier comment of Lewis County) but this comment demonstrates how informality can lead to an appearance of fairness problem.*

Board decisions should be written more clearly so that the holdings are easy to grasp quickly. A summary of the substance of the decision should be placed at the beginning of the decision. Lisa Verner (APA), Olympia meeting. *This is a good suggestion. The boards are attempting to standardize the format of final decisions and orders across all three boards. An introductory section that summarizes the board's decision will be part of that standardized format.*

The boards should make it clear what issues are before them in compliance hearings. There is often confusion about what is open for challenge at a compliance hearing. Darren Nienaber (Mason County), Olympia evening meeting. *This has been a problem in some of the cases. The boards are taking steps to develop procedural rules in compliance hearings and agree that the final decisions and orders should make it clear what is at issue for compliance purposes.*

Each hearings board member who participates in a hearing on matter must have read the relevant record prior to the hearing or recuse him/herself. Jefferson County Commissioners, letter dated April 26, 2004. Growth board decisions should be based on the entire record, not just that which the parties cite, and the board members should read the entire record. Lewis County Comment letter, April 28, 2004. *The record of a land-use decision often covers many issues not raised in the petition for review. The parties must decide what portions of the record they feel are relevant and provide them to the board as part of their arguments in a case. Board members diligently read all the materials submitted. Again, the use of the term "record" to refer to all the documents considered by the local government and also to refer to the evidence before the board has created confusion on this score. The board members read the evidence submitted to them and often consult the local government comprehensive plan or code in addition. However, the boards usually do not have copies of the entire record and could not, ordinarily, read the entire record created by the local government.*

The boards are understaffed and underfunded. Each board should have an additional attorney and planner member. Darren Nienaber (Mason County), Olympia evening meeting. *We appreciate this tacit acknowledgement of the hard work board service requires. Although the boards would be delighted with additional help, we recognize the difficult budget climate in which we work and are committed to staying within the budget constraints we are given.*

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